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Remarks:

STATINTL

I think [redacted] has picked up the key problems with this bill. However, I would note it is so complex it probably has booby traps in it which may not even become apparent until after it becomes law. The various definitions in particular are circular and open to unpredictable and broad interpretations. Obviously we are not a criminal justice agency and do not want to be defined as one by operation of a new statute. We would need access to criminal justice information as defined in this law in order to fulfill our

(over)

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FROM: NAME, ADDRESS AND PHONE NO.	DATE
STATINTL [redacted] Deputy General Counsel	5/19/75

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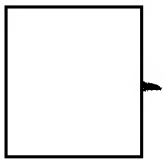
statutory responsibilities. I think it is necessary that there be some specific provision that this Agency and perhaps all foreign intelligence agencies be exempt from the definition of criminal justice agencies. I also think it necessary that the provisions for access to criminal justice information by non-criminal justice agencies be appropriately modified to take into account not only the need for such information by foreign intelligence agencies, and particularly the CIA, but also the need to protect such information in their possession and the fact that they have sought it or have it, Section 204 is not satisfactory in this regard, and several other sections in operation with 204 would create serious problems.

I think it is important to get a reading on the prospects for this bill and to consult the Committee in regard to the modifications that are likely to be made and those which we consider necessary.

STATINTL



JDM

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Remarks:

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[redacted] /OGC, 7D07 Hqs [redacted]	5/19/75

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OLC 75-1080

OGC 75-1926
16 May 1975

MEMORANDUM FOR: Office of Legislative Counsel

25X1A ATTENTION : [redacted]

SUBJECT : H.R. 61, Proposed Criminal Justice Information Control and Protection of Privacy Act of 1975

1. The intent of Congress in the drafting of this legislation is to prevent unwarranted invasion of the privacy of U.S. citizens through uncontrolled dissemination of criminal justice information by Federal, state and local criminal justice agencies. The problem presented to the Agency is principally one of nomenclature. Is the Agency a criminal justice agency as defined in section 102(6) of H.R. 61 because it does perform certain collection and security investigations that necessitate obtaining criminal justice information as defined in section 102(6) and criminal justice intelligence information as defined in section 102(8). To provide an answer to this question one must in analyzing this bill consider whether the intelligence functions and collection duties of the Agency under sections 102(d)(3)(4) and (5) of the National Security Act can in certain respects be considered as criminal justice activities, thereby making the Agency a criminal justice agency. In the definitions under section 102 of H.R. 61 information that leads to the prevention of a crime, the arrest of an offender or detection of a crime, acquired by an agency would make that agency a criminal justice agency. To avoid the application of these definitions to the Agency's activity it should be emphasized that the National Security Act provides in section 102(d)(3) that the Agency has as its responsibility to:

> [C]orrelate and evaluate intelligence relating to the national security and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities .... (emphasis added)

In performing this duty the Agency does from time to time provide to other Government agencies foreign intelligence on international criminal activities such as terrorism, narcotics traffic and subversive activities of particular groups, all of which could bring the Agency under the definition of a criminal justice agency. Thus, a question that could be raised with the Congressional subcommittee considering this bill is whether the performance of these functions under the National Security Act are functions that would

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be perceived as criminal justice activity. If they are, then does this raise the specter of Agency participation in internal security or police functions? On the one hand the Agency's collection activity may lead to the supplying of other Government agencies with criminal justice intelligence information that could ultimately lead to the arrest of a violator of the law. But this ultimate result is incidental to the Agency's collection function which does not entail conducting criminal justice investigations. On the other hand, if the Agency receives information from a clearly cognizable criminal justice agency, does it become a criminal justice agency by definition? If it does, then complying with the collection and dissemination provisions of H.R. 61 may erode the Agency's flexibility in its existing formal and informal relations with other Government agencies.

2. Considering the individual sections of H.R. 61 on the assumption that the Agency is not a criminal justice agency as defined by the bill, it should be noted that section 103(b)(8) exempts from its provisions criminal justice intelligence information that is classified for national defense or foreign policy reasons. This raises the question of whether information obtained by the Agency that could be considered as criminal justice intelligence information would be exempt from the provisions of the bill solely on its classification, and for national security or defense reasons. The argument can be made that the majority if not the totality of the information collected by this Agency relates to national security, defense or foreign policy (whether it concerns foreign criminal elements, their activities or foreign criminal activities of U.S. citizens) and is subject to classification.

3. Section 201(a) of H.R. 61 would present a problem to the Agency if it were to meet the definition of a criminal justice agency. Under this section disclosure of the Agency's information systems in a "published regulation" would probably violate section 102(d)(3) of the National Security Act in that it would amount to a disclosure of intelligence sources and methods. Section 201(d) of H.R. 61 would present a similar problem if this Agency, or any foreign intelligence gathering agency, acknowledges pursuant to section 201(a) that it receives foreign criminal justice information.

4. A problem may not be presented by section 203 of H.R. 61 since it is silent as to the access to criminal justice information through automated data systems by non-criminal justice agencies. But there may be a problem in section 204(b) if records described in this section cannot be duplicated or retained by the Agency for future reference.

5. The requirements of section 204(c) would not present a problem to the Agency with applicants that are aware that they are being investigated.

It may present a problem if individuals that are covertly investigated as possible intelligence sources or for recruitment for intelligence operations must receive notification. Giving them notification may not be advisable for operational reasons in that it could jeopardize obtaining their services. Also compliance with this section would violate the requirements of section 102(d)(3) of the National Security Act that intelligence sources and methods be protected.

6. Sections 204(d) and (e) of H.R. 61 could be modified to include the Agency as a recipient of criminal justice information where such information is considered by the National Security Council to affect the national security of the United States. It may be advisable, however, to avoid this approach since formal and informal agreements exist between the Agency and a number of agencies that would be considered under the provisions of H.R. 61 as criminal justice agencies.

7. The Agency would in most respects qualify for access to criminal justice information under sections 204(g) of H.R. 61. Formal agreements already exist in some cases, and others can be made. Under section 204(h) investigative proprietaries of the Office of Security would have to consider formalizing any existing informal agreements or arrangements they might have with criminal justice agencies. Disclosure of the purpose of the requests of these proprietaries to criminal justice agencies may also present a problem. As with section 204(c), section 205(a)(3) of H.R. 61 would not present a problem to the Agency in regard to applicants that are aware of investigations, but may present a problem where the investigation is for the recruitment of an intelligence source.

8. The provisions of section 206(a) could have a bearing on the Agency's counterintelligence operations if in furtherance of counterintelligence operations the Agency received criminal justice information that would only be available to domestic law enforcement organizations. For consideration is whether the language in section 206(a) would place the Agency in a position in which receiving such information would violate the requirement in section 103(d)(3) of the National Security Act that the Agency will have no "police, subpoena, law-enforcement powers or internal security functions." Also for consideration is whether information obtained by the Agency from a criminal justice organization and furnished to a private commercial organization for operational reasons, would violate this section.

9. The provisions of section 208 of H.R. 61 do not present a problem as long as the Agency is not defined as a criminal justice agency. The problem faced if the Agency were to be considered a criminal justice

agency is the problem faced by the Agency in processing requests under the Freedom of Information Act. At present the Agency receives numerous requests under the Freedom of Information Act relating to investigatory information. To receive for processing additional requests pursuant to a codified H.R. 61 would further inundate the Agency, regardless of whether the information existed in Agency files.

10. Problems for the Agency may also be presented by the provisions of section 209(b)(2) of H.R. 61 if a criminal justice agency is required to maintain records for a period of three years in which are listed the CIA personnel who have access to the information obtained from the criminal justice agency. Compliance with such recordkeeping requirements could conceivably disclose the identities of Agency officers that may be under cover. Section 209(c) requires and would entail additional legislation or an executive order authorizing access of the Agency to the computer system of a criminal justice agency. The disclosure aspects of section 209(f) could aid the Agency in its quest for legislation that would protect intelligence sources and methods.

11. The review and oversight function of a "Commission on Criminal Justice Information" would present problems to the Agency were it to be considered a criminal justice agency. Section 302(a)(3) of H.R. 61 would enable the Commission to investigate any complaint against a criminal justice agency. It is probable that the Commission under the mandate of section 302(a)(3) would have to make at least a cursory investigation of each complaint whether legitimate or not. Again, it should be emphasized that if the Agency were to be considered a criminal justice agency, one can visualize a number of complaints and the generation of considerable manhours in responding and complying with Commission requests for information.

12. As stated above the Agency's functions under the National Security Act should not subject it to the provisions of H.R. 61. It is recommended that the Agency's position on this bill be that intelligence agencies of the Government be exempt from its provisions. It can be argued that to be called a criminal justice agency not only raises the specter of domestic involvement in police and law enforcement activities, but would treat the Agency as a domestic law enforcement organization which was not the original purpose of Congress in establishing this Agency under the National Security Act. Furthermore, the provisions of H.R. 61, if applied to the Agency, would in the final analysis erode the flexibility which currently exists in the Agency in its intelligence collection process and limit the informal contacts that this Agency has with departments and agencies that

under the bill would be considered criminal justice information agencies. It would also limit the informal relations the Agency has with foreign intelligence and law enforcement organizations.

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[redacted]
Office of General Counsel

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